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Attorneys for Defendant
SAFECO INSURANCE COMPANY OF AMERICA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NICHOLAS WRIGHT,

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF
AMERICA, a corporation;

Defendants.

Case No. 2:23-cv-07056-GW-AJR

**DEFENDANT SAFECO
INSURANCE COMPANY OF
AMERICA'S ANSWER TO
COMPLAINT**

Defendant Safeco Insurance Company of America ("Safeco" or "Defendant"), by and through the undersigned counsel, submits this Answer to the Complaint ("Complaint") of Plaintiff Nicholas Wright ("Plaintiff"). Unless as expressly admitted herein, Defendant denies the material allegations of the Complaint and demands strict proof thereof. Defendant responds to the individually numbered allegations of the Complaint as follows:

1. In response to Paragraph 1, Defendant states that the allegations do not require a response from Defendant because they are improper legal argument and conclusions of law, argumentative, and do not reflect "a short and plain statement of the claim showing that the pleader is entitled to relief." (Fed. R. Civ.

1 Proc. 8(a).) To the extent a response is required, Defendant denies the allegations.

2 2. In response to Paragraph 2, Defendant denies the allegations.

3 3. In response to Paragraph 3, Defendant admits that Plaintiff is a
4 resident of California.

5 4. In response to Paragraph 4, Defendant states that the allegations are
6 vague. Defendant denies the allegations.

7 5. In response to Paragraph 5, Defendant admits that it is a corporation
8 organized and existing under the laws of New Hampshire, and that at all relevant
9 times, it was authorized to transact business in the state of California. Defendant
10 states that the remaining allegations are vague and overbroad. Except as expressly
11 admitted, Defendant denies the allegations of Paragraph 5.

12 6. In response to Paragraph 6, Defendant states that the allegations do not
13 require a response from Defendant because they are improper legal argument and
14 conclusions of law, argumentative, and do not reflect “a short and plain statement
15 of the claim showing that the pleader is entitled to relief.” (Fed. R. Civ. Proc. 8(a).)
16 To the extent a response is required, Defendant lacks sufficient information to form
17 a belief as to the truth of the allegations and on that basis denies them. In addition,
18 Plaintiffs are not permitted under federal law to name “DOE” defendants.

19 7. In response to Paragraph 7, Defendant admits that this Court has
20 subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. section
21 1332(a)(1) and Article III, Section 2, of the United States Constitution and personal
22 jurisdiction over Defendant pursuant to Federal Rule of Civil Procedure 4.
23 Defendant admits that it issued an automobile insurance policy, policy number
24 A3128901 for the policy period of May 7, 2017 to May 7, 2018, to Matthew Rivkin
25 as the named insured and that the insurance policy applies subject to all of its terms,
26 limitations, exclusions, and endorsements. The policy speaks for itself. Defendant
27 lacks sufficient information and belief to form a belief as to the truth of the
28 remaining allegations and on that basis denies them.

1 8. In response to Paragraph 8, Defendant admits that venue is appropriate
2 in the United States District Court for the Central District of California pursuant to
3 28 U.S.C. ¶ 1391(b). Defendant lacks sufficient information and belief to form a
4 belief as to the truth of the remaining allegations and on that basis denies them.

5 9. In response to Paragraph 9, Defendant admits that it issued an
6 automobile insurance policy, policy number A3128901 for the policy period of
7 May 7, 2017 to May 7, 2018, to Matthew Rivkin as the named insured and that the
8 insurance policy applies subject to all of its terms, limitations, exclusions, and
9 endorsements. Except as expressly admitted, Defendant denies the allegations of
10 Paragraph 9.

11 10. In response to Paragraph 10, Defendant admits it issued an automobile
12 insurance policy, policy number A3128901 for the policy period of May 7, 2017 to
13 May 7, 2018, issued to Matthew Rivkin as the named insured and that the insurance
14 policy applies subject to all of its terms, limitations, exclusions, and endorsements.
15 The Policy speaks for itself. Except as expressly admitted, Defendant denies the
16 allegations of Paragraph 10.

17 11. In response to Paragraph 11 (erroneously numbered “10”), Defendant
18 admits that a claim was reported to Defendant regarding an alleged automobile
19 accident occurring on October 22, 2017. Except as expressly admitted, Defendant
20 denies the allegations of Paragraph 11.

21 12. In response to Paragraph 12 (erroneously numbered “11”), Defendant
22 admits that it assigned claim number 129757176002 to the claim submitted to it
23 arising out of the alleged October 22, 2017 automobile accident. Except as
24 expressly admitted, Defendant denies the allegations of Paragraph 12.

25 13. In response to Paragraph 13 (erroneously numbered “12”), Defendant
26 admits that attorney Jack Sogoyan faxed a letter, including attachments, dated
27 August 14, 2018 to Defendant. Mr. Sogoyan’s letter, including attachments, dated
28 August 14, 2018 speaks for itself. Except as expressly admitted, Defendant denies

1 the allegations of Paragraph 13.

2 14. In response to Paragraph 14 (erroneously numbered “13”), Defendant
3 admits that it sent a letter dated September 25, 2018 to Plaintiff’s counsel, which
4 letter speaks for itself. Defendant denies the remaining allegations.

5 15. In response to Paragraph 15 (erroneously numbered “14”), Defendant
6 denies the allegations.

7 16. In response to Paragraph 16 (erroneously numbered “15”), Defendant
8 states that some the allegations do not require a response from Defendant because
9 they are improper legal argument and conclusions of law, vague, argumentative,
10 and do not reflect “a short and plain statement of the claim showing that the pleader
11 is entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
12 denies the allegations.

13 17. In response to Paragraph 17 (erroneously numbered “16”), Defendant
14 denies the allegations.

15 18. In response to Paragraph 18 (erroneously numbered “17”), Defendant
16 denies the allegations.

17 19. In response to Paragraph 19 (erroneously numbered “18”), Defendant
18 denies the allegations.

19 20. In response to Paragraph 20 (erroneously numbered “19”), Defendant
20 states that some the allegations do not require a response from Defendant because
21 they are improper legal argument and conclusions of law, argumentative, and do
22 not reflect “a short and plain statement of the claim showing that the pleader is
23 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
24 Defendant denies the allegations.

25 21. In response to Paragraph 21 (erroneously numbered “20”), Defendant
26 denies the allegations.

27 22. In response to Paragraph 22 (erroneously numbered “21”), Defendant
28 denies the allegations.

1 23. In response to Paragraph 23 (erroneously numbered “22”), Defendant
2 denies the allegations.

3 24. In response to Paragraph 24 (erroneously numbered “23”), Defendant
4 states that some the allegations do not require a response from Defendant because
5 they are improper legal argument and conclusions of law, argumentative, and do
6 not reflect “a short and plain statement of the claim showing that the pleader is
7 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
8 Defendant denies the allegations.

9 25. In response to Paragraph 25 (erroneously numbered “24”), Defendant
10 states that some the allegations do not require a response from Defendant because
11 they are improper legal argument and conclusions of law, argumentative, and do
12 not reflect “a short and plain statement of the claim showing that the pleader is
13 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
14 Defendant denies the allegations.

15 26. In response to Paragraph 26 (erroneously numbered “31”), Defendant
16 states that some the allegations do not require a response from Defendant because
17 they are improper legal argument and conclusions of law, argumentative, and do
18 not reflect “a short and plain statement of the claim showing that the pleader is
19 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
20 Defendant denies the allegations.

21 27. In response to Paragraph 27 (erroneously numbered “32”), Defendant
22 incorporate by reference its responses to paragraphs 1 through 26, above, as though
23 fully set forth herein.

24 28. In response to Paragraph 28 (erroneously numbered “33”), Defendant
25 denies the allegations.

26 29. In response to Paragraph 29 (erroneously numbered “34”), Defendant
27 denies the allegations.

28 30. In response to Paragraph 30 (erroneously numbered “35”), Defendant

1 states that some the allegations do not require a response from Defendant because
2 they are improper legal argument and conclusions of law, argumentative, and do
3 not reflect “a short and plain statement of the claim showing that the pleader is
4 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
5 Defendant denies the allegations

6 31. In response to Paragraph 31 (erroneously numbered “36”), Defendant
7 states that some the allegations do not require a response from Defendant because
8 they are improper legal argument and conclusions of law, argumentative, and do
9 not reflect “a short and plain statement of the claim showing that the pleader is
10 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
11 Defendant denies the allegations.

12 32. In response to Paragraph 32 (erroneously numbered “37”), Defendant
13 incorporates incorporate by reference its responses to paragraphs 1 through 31,
14 above, as though fully set forth herein.

15 33. In response to Paragraph 33 (erroneously numbered “38”), Defendant
16 states that some the allegations do not require a response from Defendant because
17 they are improper legal argument and conclusions of law, argumentative, and do
18 not reflect “a short and plain statement of the claim showing that the pleader is
19 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
20 Defendant admits that the subject automobile insurance policy includes an implied
21 covenant of good faith and fair dealing which applies to the insurer and insureds.
22 Except as expressly admitted, Defendant denies the allegations of Paragraph 33.

23 34. In response to Paragraph 34 (erroneously numbered “39”), Defendant
24 states that some the allegations do not require a response from Defendant because
25 they are improper legal argument and conclusions of law, argumentative, and do
26 not reflect “a short and plain statement of the claim showing that the pleader is
27 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
28 Defendant denies the allegations.

1 35. In response to Paragraph 35 (erroneously numbered “40”), Defendant
2 states that some the allegations do not require a response from Defendant because
3 they are improper legal argument and conclusions of law, argumentative, and do
4 not reflect “a short and plain statement of the claim showing that the pleader is
5 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
6 Defendant denies the allegations.

7 36. In response to Paragraph 36 (erroneously numbered “41”), Defendant
8 denies the allegations.

9 37. In response to Paragraph 37 (erroneously numbered “42”), Defendant
10 denies the allegations.

11 38. In response to Paragraph 38 (erroneously numbered “43”), Defendant
12 states that some the allegations do not require a response from Defendant because
13 they are improper legal argument and conclusions of law, argumentative, and do
14 not reflect “a short and plain statement of the claim showing that the pleader is
15 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
16 Defendant denies the allegations.

17 39. In response to Paragraph 39 (erroneously numbered “44”), Defendant
18 states that some the allegations do not require a response from Defendant because
19 they are improper legal argument and conclusions of law, argumentative, and do
20 not reflect “a short and plain statement of the claim showing that the pleader is
21 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
22 Defendant denies the allegations.

23 40. In response to Paragraph 40 (erroneously numbered “45”), Defendant
24 denies the allegations. In addition, Plaintiffs are not permitted under federal law to
25 name “DOE” defendants.

26 41. In response to Paragraph 41 (erroneously numbered “46”), Defendant
27 denies the allegations.

28 42. In response to Paragraph 42 (erroneously numbered “47”), Defendant

1 denies the allegations.

2 43. In response to Paragraph 43 (erroneously numbered “48”), Defendant
3 states that some the allegations do not require a response from Defendant because
4 they are improper legal argument and conclusions of law, argumentative, and do
5 not reflect “a short and plain statement of the claim showing that the pleader is
6 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
7 Defendant denies the allegations.

8 44. In response to Paragraph 44 (erroneously numbered “49”), Defendant
9 states that some the allegations do not require a response from Defendant because
10 they are improper legal argument and conclusions of law, argumentative, and do
11 not reflect “a short and plain statement of the claim showing that the pleader is
12 entitled to relief.” (Fed. R. Civ. Proc. 8(a).) To the extent a response is required,
13 Defendant denies the allegations.

14 45. In response to Paragraph 45 (erroneously numbered “50”), Defendant
15 incorporates by reference its responses to paragraphs 1 through 44, above, as
16 though fully set forth herein. Further, Defendant objects to allegations in this
17 paragraph on the ground that the purposed cause of action for violation of Insurance
18 Code § 790.03 has been dismissed. Defendant denies the allegations.

19 46. In response to Paragraph 46 (erroneously numbered “51”), Defendant
20 objects to allegations in this paragraph on the ground that the purposed cause of
21 action for violation of Insurance Code § 790.03 has been dismissed. Defendant
22 denies the allegations.

23 47. In response to Paragraph 47 (erroneously numbered “52”), Defendant
24 objects to allegations in this paragraph on the ground that the purposed cause of
25 action for violation of Insurance Code § 790.03 has been dismissed. Defendant
26 denies the allegations.

27 48. In response to Paragraph 48 (erroneously numbered “53”), Defendant
28 objects to allegations in this paragraph on the ground that the purposed cause of

1 action for violation of Insurance Code § 790.03 has been dismissed. Defendant
2 denies the allegations.

3 49. In response to Paragraph 49 (erroneously numbered “54”), Defendant
4 objects to allegations in this paragraph on the ground that the purposed cause of
5 action for violation of Insurance Code § 790.03 has been dismissed. Defendant
6 denies the allegations.

7 50. In response to Paragraph 50 (erroneously numbered “55”), Defendant
8 objects to allegations in this paragraph on the ground that the purposed cause of
9 action for violation of Insurance Code § 790.03 has been dismissed. Defendant
10 denies the allegations.

11 51. In response to Paragraph 51 (erroneously numbered “56”), Defendant
12 incorporate by reference its responses to paragraphs 1 through 50, above, as though
13 fully set forth herein. Further, Defendant objects to allegations in this paragraph on
14 the ground that the purposed cause of action for Negligence has been dismissed.
15 Defendant denies the allegations.

16 52. In response to Paragraph 52 (erroneously numbered “57”), Defendant
17 objects to allegations in this paragraph on the ground that the purposed cause of
18 action for violation of Negligence has been dismissed. Defendant denies the
19 allegations.

20 53. In response to Paragraph 53 (erroneously numbered “58”), Defendant
21 objects to allegations in this paragraph on the ground that the purposed cause of
22 action for violation of Negligence has been dismissed. Defendant denies the
23 allegations.

24 54. In response to Paragraph 54 (erroneously numbered “59”), Defendant
25 objects to allegations in this paragraph on the ground that the purposed cause of
26 action for violation of Negligence has been dismissed. Defendant denies the
27 allegations.

28 55. In response to Paragraph 55 (erroneously numbered “60”), Defendant

1 incorporate by reference its responses to paragraphs 1 through 54, above, as though
2 fully set forth herein. Further, Defendant objects to allegations in this paragraph on
3 the ground that the purposed cause of action for violation of Business and
4 Professions Code § 17200 has been dismissed. Defendant denies the allegations.

5 56. In response to Paragraph 56 (erroneously numbered “61”), Defendant
6 objects to allegations in this paragraph on the ground that the purposed cause of
7 action for violation of Business and Professions Code § 17200 has been dismissed.
8 Defendant denies the allegations.

9 57. In response to Paragraph 57 (erroneously numbered “62”), Defendant
10 objects to allegations in this paragraph on the ground that the purposed cause of
11 action for violation of Business and Professions Code § 17200 has been dismissed.
12 Defendant denies the allegations.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 The Complaint, and each and every purported cause of action contained
16 therein, fails to state facts sufficient to constitute a cause of action against
17 Defendant.

18 **SECOND AFFIRMATIVE DEFENSE**

19 The causes of action attempted to be stated against Defendant and set forth in
20 the Complaint are barred by all applicable contract and statutes of limitation.

21 **THIRD AFFIRMATIVE DEFENSE**

22 The causes of action attempted to be stated against Defendant and set forth in
23 the Complaint are barred by the terms, conditions, limitations, exclusions,
24 definitions and/or endorsements contained in the insurance policy at issue in this
25 litigation.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 Plaintiff has failed to satisfy all conditions precedent to his rights, if any, to
28 benefits under the insurance policy at issue in this litigation.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 To the extent that Plaintiff failed to mitigate, minimize, or avoid any
3 damages he allegedly sustained, any recovery against Defendant must be reduced
4 accordingly.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 Plaintiff has not suffered any damages as a result of any actions taken by
7 Defendant, and Plaintiffs are thus barred from asserting the Complaint, or any
8 purported claim, against Defendant.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims, in whole or in part, are barred by the equitable doctrines of
11 laches, waiver, estoppel, and unclean hands.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 Defendant has at all times exercised due care concerning any actions,
14 conduct, or other matters alleged in the Complaint, or any purported cause of action
15 asserted therein.

16 **NINTH AFFIRMATIVE DEFENSE**

17 Defendant and its representatives acted reasonably and in good faith at all
18 times material herein, based on all relevant facts and circumstances known by them
19 at the time they so acted. Accordingly, Plaintiff is barred from any recovery in this
20 action.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Defendant's coverage interpretations and claims handling were and are
23 reasonable as a matter of law and were not and are not inherently unreasonable as a
24 matter of law.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 The Complaint and each cause of action therein fails to state sufficient facts
27 to constitute a valid claim for attorneys' fees.

28 **TWELFTH AFFIRMATIVE DEFENSE**

1 Plaintiff's injuries and damages, if any, were caused by the negligence and
2 fault of others than Defendant, and such fault on the part of others proximately and
3 concurrently caused or contributed to the loss and damages complained of by
4 Plaintiff, if any there were.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 The Complaint fails to state facts sufficient to warrant an award of punitive
7 or exemplary damages, and Plaintiff has failed to plead malice, fraud, and
8 oppression with the specificity required under California Civil Code § 3294.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 The Complaint, to the extent it seeks punitive or exemplary damages against
11 Defendant, violates Defendant's right to protection from "excessive" fines as
12 provided in the Eighth Amendment to the United States Constitution and the
13 Constitution of the State of California, violates Defendant's right to substantive due
14 process and equal protection as provided in the Fifth and Fourteenth Amendments
15 to the United States Constitution and the Constitution of the State of California, and
16 does not meet the tests for allowing punitive damages set forth by the United States
17 Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), *State*
18 *Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *Philip Morris USA v.*
19 *Williams*, 549 U.S. 346 (2007), and other cases, and therefore fails to state a cause
20 of action supporting the punitive or exemplary damages claimed.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 The losses and damages allegedly sustained by Plaintiff, if any, were
23 proximately caused by intervening and superseding acts of others, which
24 intervening and superseding acts bar and/or diminish Plaintiff's recovery, if any,
25 against Defendant.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff lacks standing to bring all, or at least some, of the claims asserted in
28 the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant presently has insufficient knowledge or information on which to form a belief as to whether there are additional, as yet unstated affirmatives defenses. Thus, to the extent the Court may have jurisdiction herein, and subject to discovery in this action, Defendant expressly reserves its right to assert additional affirmative defenses.

WHEREFORE, defendant Safeco Insurance Company of America prays for relief as follows:

1. That Plaintiff take nothing by reason of the Complaint and that judgment be entered against Plaintiff and in favor of Defendant;
2. That Defendant be awarded its costs incurred in defending this action;
3. That Defendant be granted such other and further relief as the Court may deem just and proper.

Dated: September 15, 2023

MAYNARD NEXSEN LLP

By: /s/ Nicholas J. Boos
NICHOLAS J. BOOS
MATTHEW A. CHIPMAN
Attorneys for Defendant SAFECO
INSURANCE COMPANY OF
AMERICA

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VERIFICATION TO FOLLOW

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I am employed in the County of San Francisco, State of California. I am over the age of 21 and am not a party to the within action. My business address is Maynard Nexsen LLP, Two Embarcadero, Suite 1450, San Francisco, California 94111. On the date indicated below, I served the foregoing document described as:

**DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA'S
ANSWER TO COMPLAINT**


[X] BY CM/ECF ELECTRONIC SERVICE: The following are registered CM/ECF users with the Court and have consented to service through the Court's automatic transmission of a notice of electronic filing.

Jack Sogoyan (SBN 299457)
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3504 W. Magnolia Blvd.,
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Tel: (818) 928-5000
Fax: (818) 928-2104

Attorney for Plaintiff Nicholas Wright

I declare that I am employed in the office of a member who has been admitted to the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2023, in San Francisco, California.


Yolanda Nesbitt